

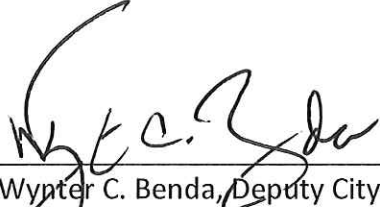


**To the Honorable Council
City of Norfolk, Virginia**

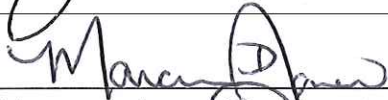
April 12, 2016

From: Stephen Kirkland, Executive Director
The Nauticus Foundation

Subject: A Grant Agreement between
the City of Norfolk and The Nauticus
Foundation for the improvement of
their educational sailing program and
the purchase of the Schooner Virginia

Reviewed: 
Wynter C. Benda, Deputy City Manager

Ward/Superward: 2/6

Approved: 
Marcus D. Jones, City Manager

Item Number:

R-21

I. Recommendation: Adopt Ordinance

II. Applicant: The Nauticus Foundation
One Waterside Drive
Norfolk, Virginia 23510

III. Description:
This agenda item is an ordinance to approve a grant agreement between the City of Norfolk (the "city") and The Nauticus Foundation ("Nauticus") for the improvement of their educational sailing program and the purchase of the Schooner Virginia, a tall ship currently owned by the Virginia Maritime Heritage Foundation (the "Schooner").

IV. Analysis
The City will receive \$1,000,000.00 from the Commonwealth of Virginia (the "State Funds") for the purpose of purchasing the Schooner. The State Funds will enable Nauticus to purchase the Schooner and assist with its ongoing maintenance and repairs.

The Schooner will further enhance the Nauticus sailing program, Sail Nauticus, and its mission to support at-risk youth throughout Hampton Roads. The vessel will serve as a training ship for educational programs and help introduce students to the mechanics, physics, and methods of sailing operations. These students will have a once-in-a-lifetime opportunity to participate in sailing a historically accurate replica of a 1917 Virginia Pilot schooner.

Day sails and training excursions within the Chesapeake Bay will be planned. Further, the vessel will be part of Nauticus' general programming. Visitors from across the country will

have the chance to board the Commonwealth's flagship and learn more about the region's maritime heritage.

V. Financial Impact

The purpose of the grant is to enable Nauticus to purchase the Schooner and assist with its ongoing maintenance and repairs. The amount of the grant is \$1,000,000 and will be provided to Nauticus upon satisfaction of the following conditions:

- The City shall have received the State Funds from the Commonwealth.
- The representations and warranties set forth in the Grant Agreement shall be true and correct as of the date the agreement is executed, and shall continue to be true and correct at the time of the proposed disbursement of the grant payment.

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the city's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with The Nauticus Foundation and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Grant Agreement

3/31/16mr

Form and Correctness Approved:

By Michelle A. Foy
Office of the City Attorney

Contents Approved:

By [Signature]
EXECUTIVE DIRECTOR, NORFOLK

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and not appropriated for any other purpose.

\$ 1,000,000.00 2016 2275 4089
Christian J. [Signature] Account
Director of Finance Date 4/6/16

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDS FROM THE COMMONWEALTH OF VIRGINIA FOR THE PURPOSE OF ENABLING THE NAUTICUS FOUNDATION TO PURCHASE SCHOONER VIRGINIA, APPROVING A GRANT AGREEMENT BETWEEN THE CITY OF NORFOLK AND THE NAUTICUS FOUNDATION, APPROPRIATING FUNDS AS CONTEMPLATED BY THE TERMS OF THE GRANT AGREEMENT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT AGREEMENT ON BEHALF OF THE CITY.

- - -

WHEREAS, The Nauticus Foundation desires to purchase the Schooner Virginia, a tall ship currently owned by the Virginia Maritime Heritage Foundation (the "Schooner"); and

WHEREAS, the City anticipates that it will receive \$1,000,000.00 from the Commonwealth of Virginia for the purpose of enabling The Nauticus Foundation to purchase the Schooner (the "State Funds"); and

WHEREAS, the City has agreed to provide the State Funds to The Nauticus Foundation to enable the The Nauticus Foundation to purchase the Schooner and to assist with the cost of ongoing maintenance and repairs; and

WHEREAS, the parties wish to enter into a Grant Agreement (the "Agreement"), a copy of which is attached hereto, to set forth the terms and conditions upon which the City will provide funds to The Nauticus Foundation for the purchase of the Schooner and for the ongoing maintenance thereof; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the City Manager is authorized to accept the State Funds in the amount of \$1,000,000.00 from the Commonwealth of Virginia.

Section 2:- That the terms and conditions of the Grant Agreement between the City of Norfolk and The Nauticus Foundation are hereby approved.

Section 3:- That the State Funds in the amount of \$1,000,000.00 are hereby appropriated and authorized for expenditure pursuant to the terms of the Grant Agreement for the purchase of the Schooner Virginia and its ongoing maintenance and repairs.

Section 4:- That the City Manager is authorized to correct, amend, or revise the Grant Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Grant Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 5:- That this ordinance shall be in effect from and after its adoption.

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Agreement") is made as of the 12th day of April, 2016, between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia, (the "City"), and **THE NAUTICUS FOUNDATION** ("Grantee").

WITNESSETH:

WHEREAS, the Grantee desires to purchase the Schooner Virginia, a tall ship currently owned by the Virginia Maritime Heritage Foundation (the "Schooner"); and

WHEREAS, the City anticipates that it will receive \$1,000,000.00 from the Commonwealth of Virginia for the purpose of purchasing the Schooner (the "State Funds") and has agreed to provide the State Funds to the Grantee to enable the Grantee to purchase the Schooner and to assist with the cost of ongoing maintenance and repairs; and

WHEREAS, the parties wish to enter into this Agreement to set forth the terms and conditions upon which the City will provide funds to the Grantee for the purchase of the Schooner and the ongoing maintenance thereof.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. The Grant.

1.1 **Purpose of the Grant.** The purpose of the grant is to enable the Grantee to purchase the Schooner and to assist with the cost of ongoing maintenance and repairs.

1.2 **Grant Amount.** The amount of the grant shall be One Million and 00/100 Dollars (\$1,000,000.00) (the "Grant Amount").

2. General Conditions to Grant.

2.1 **Payment Timing.** Subject to the conditions and limits set forth below, the City shall disburse the full Grant Amount to the Grantee within thirty (30) days after the Grantee has entered into agreement with the Virginia Maritime Heritage Foundation for the Grantee's purchase of the Schooner (the "Purchase Agreement").

2.2 **Conditions to Initial Grant Disbursement.** The disbursement of the Grant shall be subject to the satisfaction of the following conditions:

A. The City shall have the received the State Funds from the Commonwealth.

B. The representations and warranties set forth below shall be true and correct as of the date of this Agreement, and shall continue to be true and correct at the time of the proposed disbursement of the Grant payment.

3. Representations and Warranties. Grantee covenants, represents and warrants to the City that:

3.1 **Due Organization, Authority and Qualification.** Grantee has the full power and authority to enter into this Grant Agreement for the purposes set forth herein and Grantee is a duly organized and validly existing corporation under the laws of the Commonwealth of Virginia and has the power and authority to enter into this Agreement.

4. Obligations of Grantee.

4.1 **Maintenance; Repairs.** Any Grant funds remaining after the purchase of the Schooner shall be used solely for the purposes of maintenance and repair of the Schooner.

4.2 **Reimbursement if Fail to Close.** In the event the Grantee does not close upon the purchase of the Schooner in accordance with the terms of the Purchase Agreement, the Grant funds shall be reimbursed to the City upon the request of the City and the terms and conditions of this Agreement shall be of no further force or effect.

5. General Matters.

5.1. **Exculpation.**

A. No person executing this Agreement on behalf of either party shall be liable personally thereon by reason of the execution and delivery hereof. This Agreement is not, and shall not be deemed to constitute, a general obligation of the City. In no event shall any amounts payable under this Agreement be payable out of funds or properties other than as set forth herein. This Agreement shall not constitute indebtedness within the meaning of any municipal debt limitation or restriction.

B. No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the City or Grantee in his or her individual capacity, and no such director, officer, employee or agent shall be subject to any liability under this Agreement or with respect to any other action taken by him or her.

5.2 **Assignment.** Grantee's rights under this Agreement may not be assigned without the City's prior written permission.

5.3 **Non-Waiver.** The failure of the City to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by the City of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by the City.

5.4 **Severability.** If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, unless such invalidity would create undue hardship to the City, or is essential to its rights, in which event the City has the right to terminate this Agreement on written notice to Grantee.

5.5 **Applicable Law.** This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia. In the event of a conflict arising hereunder, venue shall be in the Circuit Court of the City of Norfolk.

5.6 **Interpretation.** For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation, limited liability company, business trust or partnership. Headings of Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

5.7 **Notices.** All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received. The notice addresses for the City and the Grantee shall be as set forth below:

If to the City:

City Manager
810 Union Street
1101 City Hall Building
Norfolk, VA 23510

With a copy to:

City Attorney
810 Union Street
900 City Hall Building
Norfolk, VA 23510

If to the Grantee:

The Nauticus Foundation
Steven Kirkland, Executive Director
One Waterside Drive
Norfolk, VA 23510

5.8 Non-Discriminatory Policies.

A. Grantee will not discriminate against any employee or applicant for employment because of the race, religion, color, sex or national origin of the employee or applicant for employment in violation of applicable law, except where religion, sex or national origin is *a bona fide* occupational qualification reasonably necessary to the normal operation of Grantee. Grantee agrees to post in conspicuous places, available to employees and applicants for employment by it, notices relating to nondiscrimination policies as may be required by applicable law.

B. Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee will state that Grantee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

5.9 Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the parties with respect to the Grant, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the City and Grantee. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

5.10 Third Party Beneficiary. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third party beneficiary.

5.11 Time of the Essence. Time is of the essence in the performance of the obligations of the parties under this Agreement.

5.12 Successors and Assigns. The conditions, covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

CITY OF NORFOLK

By: _____
Marcus D. Jones, City Manager

ATTEST:

City Clerk

APPROVED AS TO CONTENTS:

Deputy City Manager

**APPROVED AS TO FORM AND
CORRECTNESS:**

Assistant City Attorney

THE NAUTICUS FOUNDATION

By: _____
Name: _____
Title: _____